

1984 WL 249970 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 31, 1984

*1 The Honorable John T. Campbell
Secretary of State
Post Office Box 11350
Columbia, South Carolina 29211

Dear Mr. Secretary:

By your letter of July 16, 1984, you have asked the advice of this Office as to whether you may accept for filing limited partnership documents whose titles contain the word LIMITED or the abbreviation LTD. in view of the recent adoption of a Uniform Limited Partnership Act by our General Assembly. It is the opinion of this Office that each certificate of limited partnership must contain, in the name of the limited partnership, the words 'Limited Partnership' without abbreviation; whether the partnership is domestic or foreign would be immaterial, as would the fact that a foreign partnership name, in its home state, contained an abbreviation of the term 'Limited.'

By Act No. 491, 1984 Acts and Joint Resolutions, the General Assembly repealed Chapter 41 of Title 33 of the Code of Laws of South Carolina (1976) and replaced the chapter with a new Uniform Limited Partnership Act, to be codified as Chapter 42 of Title 33. Certain provisions of the new act are relevant to your inquiry and will be discussed herein. Section 33-42-30, concerning the name of limited partnerships, provides in part:

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain without abbreviation the words 'limited partnership';

As to names of foreign limited partnerships, two provisions of the Act are applicable. Section 33-42-1620, pertaining to registration of foreign limited partnerships, provides in part:

Before transacting business in this State, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;

Additionally, Section 33-42-1640 provides:

A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words 'limited partnership' and that could be registered by a domestic limited partnership.

In construing these statutes, certain rules of statutory construction must be kept in mind. Whenever possible, the primary obligation of the courts of this State, and this Office, is to determine the legislature's intent in enacting a statute and then construe that statute to give effect to that intent. [Arkwright Mills v. Murph](#), 219 S.C. 438, 65 S.E.2d 665 (1951). Where the language of a statute is clear and unambiguous, the literal meaning of the statute must be applied. [State v. Goolsby](#), 278 S.C. 52, 292 S.E.2d 180 (1982). Further, the use of the term 'shall' connotes mandatory compliance with the statute. 2A [Sutherland Statutory Construction](#) § 57.03. Applying these rules of construction, it appears that the legislature intended that all limited partnerships, whether domestic or foreign, which transact business in this State pursuant to a duly issued certificate of limited partnership, must have the words 'limited partnership' without abbreviation within the name of the limited partnership.

***2** As your letter of July 16 indicates, a provision of the South Carolina Business Corporation Act appears to be contradictory. Section 33-5-10(e) provides:

From and after January 1, 1964, no partnership, limited partnership, jointstock company, or other unincorporated business enterprise shall include in its name the word 'corporation', 'incorporated', or 'limited', or an abbreviation of any such words.

It would appear that as to limited partnerships, this statute directly and irreconcilably conflicts with Sections 33-42-30(1) and 33-42-1640. It must be presumed that the legislature knew of the existence of Section 33-5-10(e) and that the legislature did not intend to do a futile act by enacting Sections 33-42-30(1) and 33-42-1640. [Bell v. South Carolina State Highway Department](#), 204 S.C. 462, 30 S.E.2d 65 (1944); [Ingram v. Bearden](#), 212 S.C. 399, 47 S.E.2d 833 (1948). Although implied repeal of a statute is disfavored and is to be avoided if any reasonable construction may prevent such repeal, [Strickland v. State](#), 276 S.C. 17, 274 S.E.2d 430 (1981), we believe that a court in this instance would find Section 33-5-10(e) to have been impliedly repealed to the extent inconsistent with Sections 33-42-30(1) and 33-42-1640. In addition, Sections 33-42-30(1) and 33-42-1640 are more recent expressions of the legislature's will and would prevail over Section 33-5-10(e), which was adopted in Act No. 146, 1981 Acts and Joint Resolutions, an earlier statute. [Jolly v. Atlantic Greyhound Corporation](#), 207 S.C. 1, 35 S.E.2d 42 (1945). Finally, the Uniform Limited Partnership Act is a comprehensive treatment of the subject of limited partnerships, and its provisions should prevail over portions of a statute contained in an act relating to business corporations. [Wilder v. South Carolina State Highway Department](#), 228 S.C. 448, 90 S.E.2d 635 (1956). Considering all factors, we believe that a court would follow Sections 33-42-30(1) and 33-42-1640, to require the use of the words 'limited partnerships' in the names of such partnerships, Section 33-5-10(e) notwithstanding.

It has been argued that foreign limited partnerships should be allowed to use abbreviations for the words 'limited partnerships' if the name of a limited partnership in its state of organization so uses abbreviations. It is apparent that the legislature considered that such a foreign limited partnership might utilize a name in South Carolina different from its name elsewhere. Section 33-42-1640, quoted *supra*, parenthetically states, 'whether or not it is the name under which [the limited partnership] is registered in its state of organization.' Thus, the legislature anticipated that, for whatever reason, a foreign limited partnership might use a different name in South Carolina. Further, to allow a foreign limited partnership to use an abbreviation for the words 'limited partnership' because such words are abbreviated in the limited partnership's name elsewhere would be to treat the limited partnerships of this State disparately for no readily ascertainable reason. Such treatment could give rise to a cause of action by the partners of a South Carolina limited partnership to remedy the inequity. [Marvil Properties v. Fripp Island Development Corporation](#), 273 S.C. 619, 258 S.E.2d 106 (1979). Thus, a foreign limited partnership would be required to comply with this State's law as to the name of the limited partnership.

***3** A final argument which may be employed by foreign limited partnerships seeking to abbreviate the words 'limited partnership' in their names in South Carolina also must fall. Section 33-42-1610 states:

Subject to the Constitution of this State, (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State. [Emphasis added.]

A foreign limited partnership may argue that its name has been chosen in accordance with the laws of the state in which it was organized; thus, that law prevails and would permit abbreviations of the words 'limited partnership.' It appears that the legislature intended the laws of the state of organization to govern only as to organization, internal affairs, and liability of limited partners.

Where words of a statute are undefined, and a technical sense is not indicated, words are to be given their plain and ordinary meaning. Cf., [Worthington v. Belcher](#), 274 S.C. 366, 264 S.E.2d 148 (1980). The term 'organization' means 'vital, integral parts which are necessary for continued operation.' [Michigan Employment Security Commission v. Arrow Plating Company](#), 10 Mich. App. 323, 159 N.W.2d 378, 381 (1968). As to a corporation, 'organization' refers to such acts as electing officers, determining capital stock matters, adoption of by-laws, and such other actions as would be necessary to endow the corporation, as a legal entity, with the capacity to transact legitimate business for which the corporation was created. [Omaha National Bank v. Jensen](#), 157 Neb. 22, 58 N.W.2d 582 (1953). As to a limited partnership, organization would include such items as determining contributions of the various partners, rights and powers of partners, relationship of partners among themselves, compensation, withdrawal of partners, dissolution, and so forth. The term 'internal affairs' would relate to matters within the limits of the limited partnership. See 'internal,' Webster's Third New International Dictionary 1180 (1976). Internal affairs would most likely refer to day-to-day, internal business activities. Liability of limited partners needs no interpretation herein. It is the opinion of this Office that the name of a limited partnership was not among those matters to which the legislature intended to have the law of the state of organization apply.

The general rule as to conflicts of law relating to limited partnerships has been stated in 68 C.J.S., [Partnerships](#), § 451: Generally, the law governing limited partnerships is that of the jurisdiction under whose laws the partnership was organized[.] . . . The law of the forum has been applied to determine the necessity of compliance with local statutory requirements for the renewal or continuance as a limited partnership of a firm organized in another jurisdiction. . . .

***4** Here, South Carolina, as the forum state, has mandated certain requirements for a foreign limited partnership to receive a certificate to transact business in this State. The requirement does not reach the organization or internal operations of the limited partnership, nor does it affect liabilities of limited partners. Hence, the requirement that the name contain the words 'limited partnership' must be followed.

The role of the Secretary of State as to registration of foreign limited partnerships is provided by Section 33-42-1630, which provides:

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(1) endorse on the application the word 'Filed', and the month, day, and year of the filing thereof;

(2) file in his office a duplicate original of the application;

(3) issue a certificate of registration to transact business in this State.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

The application for registration for foreign limited partnerships is provided for by Section 33-42-1620; the requirements of the application include the name of the foreign limited partnership (and the name, if different, which the limited partnership would use in this State); the state and date of formation of the limited partnership; general character of business it proposes to conduct in

this State; name and address of any agent for service of process; statement as to the Secretary of State being the agent for service of process under certain conditions; addresses of offices of the limited partnership; names and addresses of the partners.¹

The above-cited sections provide that if a limited partnership complies with the requirements of the Uniform Limited Partnership Act, particularly Sections 33-42-1620 and 33-42-1640, he shall endorse the application, file a duplicate, and issue a certificate of registration. The sections do not leave the filing and so forth to the discretion of the Secretary of State once the above-referenced statutory requirements have been met. If all of the requirements have been met, then the Secretary of State must proceed with filing. See [Commonwealth Investment Co. of Columbia v. Thornton](#), 244 S.C. 146, 135 S.E.2d 762 (1964); Cf. [Green v. Thornton](#), 265 S.C. 436, 219 S.E.2d 827 (1975). Likewise, if the application is not in conformity with the sections above-cited, the Secretary of State cannot file the application. Cf., 18 Am.Jur.2d, [Corporations](#), § 40. As to such filing requirements, the duties of the Secretary of State are ministerial in nature. See [Op. Atty. Gen.](#) dated April 3, 1984.

We trust that we have satisfactorily responded to your inquiry. Please advise if further information or clarification should be needed.

Sincerely,

Patricia D. Petway

*5 Assistant Attorney General

Footnotes

- ¹ This general list of requirements is not intended to be exhaustive and explicit. For complete details, reference must be had to Section 33-42-1620.

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